

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs. 1:21-cr-154

KRISTOFER LANDELL,

Defendant.

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Transcript of a Change of Plea held on June 8,  
2021, at the Federal Building and Courthouse, 15 Henry  
Street, Binghamton, New York, the HONORABLE THOMAS J.  
McAVOY, Senior District Judge, Presiding.

A P P E A R A N C E S

For The Government: UNITED STATES ATTORNEY'S OFFICE  
BY: TODD GLEASON, ESQ.  
GARY DONNER, ESQ.  
Assistant U.S. Attorneys

For Defendant: OFFICE OF FEDERAL PUBLIC DEFENDER  
BY: MATTHEW TRAINOR, ESQ.

*Ruth I. Lynch, RPR, RMR, NYSRCR  
Official United States Court Reporter  
Binghamton, New York 13901*

1 THE CLERK: United States of America versus  
2 Kristofer Landell, 1:2021-CR-154.

3 Can we please have the appearances for the  
4 record?

5 MR. GLEASON: Todd Gleason and Gary Donner  
6 for the United States. Good morning, your Honor.

7 THE COURT: How are you?

8 MR. GLEASON: Very good.

9 THE COURT: Mr. Gleason, is that you?

10 MR. GLEASON: I'm Mr. Gleason, this is  
11 Mr. Donner.

12 THE COURT: I got the two of you confused.

13 MR. DONNER: Good morning, your Honor.

14 THE COURT: I've only seen you five times  
15 before.

16 MR. GLEASON: Right.

17 THE COURT: All right. How about who's  
18 appearing for the defendant, Mr. Landell?

19 MR. TRAINOR: Matthew Trainor, here on  
20 behalf of Kristofer Landell, seated to my left.

21 THE COURT: Good morning, Mr. Trainor.  
22 Good morning, Mr. Landell.

23 THE CLERK: Will the defendant please rise?  
24 Will you raise your right hand?

25 (The witness was duly sworn.)

1           K R I S T O F E R   L A N D E L L ,  
2           having been called as a witness, having  
3           been duly sworn, testified as follows:

4           THE COURT: Now, Mr. Gleason and Mr. Donner  
5           and Mr. Trainor, I have a note on my file indicating  
6           that the parties have advised that they will be  
7           waiving the reading of the entire information and they  
8           would state that on the record as well.

9           So, Mr. Gleason, Mr. Donner, what's your  
10          position on that?

11          MR. GLEASON: You are absolutely correct, we  
12          waive; we've advised that we don't need the  
13          information read into the record.

14          And my understanding is that Mr. Trainor has  
15          gone over the information with his client and that  
16          they would waive as well.

17          THE COURT: Mr. Trainor, what's your  
18          position?

19          MR. TRAINOR: As Mr. Gleason said, your  
20          Honor, we would also waive reading of the information  
21          today.

22          THE COURT: Mr. Landell, you understand  
23          what's going on here?

24          THE DEFENDANT: Yes, I do.

25          THE COURT: The accusations as to what you

1 did or didn't do in connection with the asbestos  
2 removal problems are contained in a document which is  
3 called an information. That's prepared by the  
4 government, and that contains a list of what  
5 effectuates your conduct in this case that constitutes  
6 the criminal activity charged. And ordinarily what  
7 happens is we come in, and the attorney -- the  
8 attorney doesn't do it but I have the clerk read the  
9 information, and then you're asked if you plead guilty  
10 or not guilty. And we're going to do the same thing  
11 today, except what they want to do is not read the  
12 entire information. And the reason for that, I take  
13 it, is because it's lengthy; it is written in English,  
14 I'll give them that much, but that's -- that's about  
15 all. Because it's completely, well, I don't know.  
16 But it's -- it's a little bit lengthy.

17 And I think it's critical that I ask you, do  
18 you understand what the information charges you with?

19 THE DEFENDANT: Yes, your Honor, I do.

20 THE COURT: And have you talked that over  
21 with Mr. Trainor?

22 THE DEFENDANT: Yes.

23 THE COURT: Yes?

24 THE DEFENDANT: Yes.

25 THE COURT: Did he explain it to you?

1 THE DEFENDANT: Yes, he did.

2 THE COURT: Do you feel comfortable agreeing  
3 to saying what's in -- what's in the information is  
4 the conduct that you did in connection with this  
5 asbestos removal project?

6 THE DEFENDANT: Yes, your Honor, I do.

7 THE COURT: All right.

8 All right, well, the Court's -- I don't know  
9 how the Circuit's going to look at this, but I'll take  
10 a chance and agree to proceed that way. Because it  
11 makes sense to me, Mr. Landell sounds to me like he  
12 knows what he's talking about. And he tells me he  
13 understands what's in the information, and he agrees  
14 that that is what his conduct was. Based on that,  
15 I'll accept the agreement between counsel not to read  
16 the entire information and to save the lives of the  
17 clerk and the stenographer.

18 Now, let's move from that to the plea  
19 agreement. This plea agreement is no different than  
20 the ones that we've been working with with the last  
21 two or three defendants. But there's nothing in this  
22 plea agreement that waives the right to a certain  
23 sentence in terms of months. And is there a reason  
24 for that?

25 MR. GLEASON: My understanding is this plea

1 agreement is identical to the others insofar as the --  
2 the defendant is waiving certain appellate rights and  
3 collateral attack rights with the exception of  
4 ineffective assistance of counsel along with a couple  
5 other things, but more importantly what I think the  
6 Court is alerted to is he's waiving the right to  
7 appeal provided the sentence is no greater than the  
8 advisory guidelines range that would be calculated in  
9 this particular case. And we have -- I will go over  
10 that at the appropriate time. We do have a rough  
11 guidelines calculation.

12 THE COURT: Right.

13 MR. GLEASON: And we have stipulated  
14 provisions, but that's the --

15 THE COURT: Okay.

16 MR. GLEASON: -- government's understanding  
17 of the waiver of appellate rights in this particular  
18 case. And those are laid out in -- pardon me, in  
19 paragraph 7 of the plea agreement. On page 18 that's  
20 paragraph 7A and B.

21 THE COURT: All right. Thank you for  
22 explaining that to me.

23 Mr. Landell, would you please state your  
24 full name?

25 THE DEFENDANT: It's Kristofer Stephen

1 Landell.

2 THE COURT: And how old are ya?

3 THE DEFENDANT: I'm 36.

4 THE COURT: What's your date of birth?

5 THE DEFENDANT: October 21st, 1984.

6 THE COURT: Are you married?

7 THE DEFENDANT: Yes, I am.

8 THE COURT: Do you have any children?

9 THE DEFENDANT: I do.

10 THE COURT: How many?

11 THE DEFENDANT: One.

12 THE COURT: And is it a boy or a girl?

13 THE DEFENDANT: It's a boy.

14 THE COURT: How old is he?

15 THE DEFENDANT: He's eight years old.

16 THE COURT: All right. How far did you go  
17 in school?

18 THE DEFENDANT: I have a bachelor's degree.

19 THE COURT: And what kind of work have you  
20 done over the years?

21 THE DEFENDANT: Anything from substitute  
22 teaching, I went into business doing asbestos, I've  
23 worked just through college, like grocery stores.  
24 Things like that.

25 THE COURT: All right. Have you had any

1 alcohol or narcotics in the past 24 hours?

2 THE DEFENDANT: No, I have not.

3 THE COURT: Are you currently or have you  
4 recently been under the care of any physician,  
5 psychiatrist, or other medical care provider for any  
6 physical or mental condition?

7 THE DEFENDANT: No, I have not.

8 THE COURT: Are you taking any medication at  
9 the present time?

10 THE DEFENDANT: No.

11 THE COURT: Did the Court assign Mr. Trainor  
12 to represent you?

13 THE DEFENDANT: Yes.

14 THE COURT: Has he advised you of the  
15 content of the charge in the information?

16 THE DEFENDANT: Yes.

17 THE COURT: And you told me a few moments  
18 ago that you understood that. Was that true?

19 THE DEFENDANT: Yes.

20 THE COURT: All right. In a few moments I'm  
21 going to ask you some additional questions. But first  
22 I want to talk to you about waiving your right to  
23 indictment. And in order to be convicted of a federal  
24 felony, you have to either be convicted after trial,  
25 with the jury making a decision, or the Court is -- a



1 Court trial only, or you could be indicted by a grand  
2 jury and then plead guilty to -- to the indictment  
3 charged, or in this case you can waive, or give up,  
4 your right to indictment and proceed to plead to the  
5 U.S. Attorney's information just as though you had  
6 been indicted.

7 Did you talk to Mr. Trainor about waiving,  
8 or giving up, your right to indictment by a grand  
9 jury?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you know that you do have a  
12 right to have this matter presented to and considered  
13 by a grand jury and have them indict you?

14 THE DEFENDANT: Yes. Yes, I -- I understand  
15 that.

16 THE COURT: Okay. Has anybody made any  
17 promises to you or threats against you to induce you  
18 to waive indictment?

19 THE DEFENDANT: No.

20 THE COURT: Do you wish to waive your right  
21 to indictment?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: Mr. Trainor, do you see any  
24 reason why Mr. Landell should not waive his right?

25 MR. TRAINOR: No, your Honor, I don't.

1           THE COURT: All right, the Court will find  
2 the waiver was made knowingly and voluntarily and will  
3 accept the waiver.

4           Now, as I indicated before, I'm going to be  
5 asking you a few additional questions in order to  
6 learn if you're pleading guilty freely and  
7 voluntarily, with an understanding of the charge and  
8 the consequences.

9           I'm going to be asking you if anybody has  
10 made any promises of leniency to you to induce you to  
11 plead guilty or threatened you with the use of force  
12 to induce you to plead guilty.

13           I'm going to be listening to something about  
14 what you did in this case so the Court can establish  
15 that there's a factual basis for accepting and  
16 entering your plea, and I'm going to ask you to  
17 reaffirm the information you just gave me about your  
18 personal history and background. And I want to advise  
19 you that if your answers are not truthful, they may  
20 later be used against you in a prosecution for  
21 perjury, or making a false statement. Do you  
22 understand that?

23           THE DEFENDANT: Yes, I do, your Honor.

24           THE COURT: Before I ask you these  
25 additional questions and before the clerk takes your

1 plea, I want to advise you of some rights that you  
2 have in connection with this matter.

3 First of all, you have the right to persist  
4 in your original plea of not guilty.

5 You have the right to a speedy and a public  
6 trial by an impartial jury of 12 persons or to a trial  
7 by the Court alone, if you were to waive, or give up,  
8 your right to a jury trial. At such a trial you would  
9 have the right to the assistance of an attorney. You  
10 would have the right to confront, that is to see and  
11 hear, any witnesses sworn against you and to  
12 cross-examine them. You would have the right to  
13 remain silent or to testify in your own behalf, but  
14 you couldn't be compelled to incriminate yourself or  
15 to testify at all, and your silence could not be held  
16 against you in any way, nor could any inferences of  
17 guilt be drawn against you if you decided not to  
18 testify.

19 You have the right to use a subpoena or  
20 other processes of the Court to compel witnesses to  
21 attend the trial and testify and to obtain any  
22 documentary or other evidence you might wish to offer  
23 in your own defense.

24 Now, if the Court accepts your plea of  
25 guilty here this morning, there won't be a trial of

1 any kind, and the Court will have the same power to  
2 sentence you as if you had been found guilty after a  
3 trial on the information to which you're pleading.

4 Now, you told me, this is the third time I'm  
5 asking you this. You told me that you talked to  
6 Mr. Trainor about what the charge in the information  
7 meant and that you understood it. Is that true?

8 THE DEFENDANT: Yes, that's true.

9 THE COURT: Did you talk to Mr. Trainor  
10 about the potential sentences or consequences of  
11 pleading guilty?

12 THE DEFENDANT: Yes, your Honor, I did.

13 THE COURT: Did he explain those to you?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand them?

16 THE DEFENDANT: Yes.

17 THE COURT: Did you talk to him about your  
18 chances of winning or losing if you decided to go to  
19 trial, trial strategy, and defenses?

20 THE DEFENDANT: We touched on that briefly,  
21 yes.

22 THE COURT: I'm sorry?

23 THE DEFENDANT: We -- we went over that  
24 briefly, yes.

25 THE COURT: So do you understand those

1 rights?

2 THE DEFENDANT: Yes.

3 THE COURT: Lastly I want to warn you that  
4 your plea of guilty constitutes a waiver, or giving  
5 up, of your right against self-incrimination, and I  
6 want to warn you not to plead guilty unless you are in  
7 fact guilty of the charge made against you in the  
8 information.

9 Do you still wish to plead guilty?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: So now the parties have agreed,  
12 attorneys have agreed, I guess, not to read the entire  
13 information. So does somebody want to make a quick  
14 recitation of the content of the information, or how  
15 we going to do it?

16 MR. GLEASON: I'd be happy to do so, your  
17 Honor.

18 As you said, the allegations are laid out  
19 largely in the information but there's also a fairly  
20 robust factual allocution in the plea agreement itself  
21 that covers much of the same content. Specifically  
22 that's set forth in paragraph 5 on pages 4 through 16,  
23 in addition to what's set forth in the information.

24 So if this case were to come to trial, your  
25 Honor, the United States would prove with documents,

1 testimony, photographs, and other evidence the follows  
2 facts beyond a reasonable doubt:

3           Specifically that the defendant was what was  
4 known as an asbestos air and project monitor, which is  
5 slightly different than what we've dealt with so far,  
6 your Honor. He, like others, was also licensed by the  
7 State of New York to carry out such activities in  
8 connection with asbestos work. He received accredited  
9 training and passed a written test to get that  
10 certification. That training touched on a number of  
11 different areas. Project monitors get probably some  
12 of the most robust training in this regard, and I'll  
13 get to that in just a moment, but they cover both  
14 federal and state law. The state law, state  
15 regulations relevant to asbestos, are colloquially  
16 referred to as Code Rule 56. You may have heard that  
17 in the past, your Honor. But specifically what that  
18 training touched on was the identification of what's  
19 known as suspect asbestos containing material, bulk  
20 and air sampling, and the analysis of such materials;  
21 which was a big part of this particular defendant's  
22 job.

23           The requirements were remove all regulated  
24 asbestos containing materials, which I'll refer to as  
25 RACM from this point forward, R-A-C-M, and that it

1 must be removed prior to any renovation or demolition  
2 activities.

3 And likewise I will also stop here and say  
4 for the court reporter's purposes if I'm going too  
5 quickly through this, please just let me know. I know  
6 I have a tendency to speak way too fast.

7 The defendant also was trained on the  
8 preparation of the work area where RACM would be  
9 handled and removed, how it would be removed, such as  
10 the proper wet removal techniques, disposal  
11 requirements, air monitoring practices, and then  
12 worker protection in the form of personal protective  
13 equipment like masks, suits, respirators, that sort of  
14 thing.

15 The evidence would show the defendant was  
16 the owner of an air and project monitoring company  
17 known as Hudson River Valley Environmental, or HRVE;  
18 and that as an air and project monitor, the defendant  
19 and his company were responsible for a number of  
20 items, not the least of which was remaining on-site at  
21 all times to observe the removal that was going on,  
22 conducting various types of sampling throughout the  
23 duration of that project, particularly air sampling;  
24 maintaining air and project monitor sample logs and  
25 other paperwork required under Code Rule 56; regularly

1     calibrating and checking the air monitoring equipment  
2     to make sure that it was actually giving accurate  
3     results; and then conducting what's known as a final  
4     visual inspection or final air clearance after the  
5     abatement work was completed to make sure that the  
6     area was safe to be reinhabited.

7             The defendant also contractually obligated  
8     himself to Tech City and DOL through what's known as a  
9     variance under the code rule. And under the terms of  
10    this particular variance, he was obligated to ensure  
11    compliance with asbestos regulations and prevent  
12    visible emissions during the work of this project.  
13    Notwithstanding these obligations, the defendant --or,  
14    pardon me, there's also one other obligation that the  
15    air and project monitoring company cannot have a  
16    financial entanglement or any relationship with the  
17    abatement workers he was monitoring, which makes  
18    sense. Sort of a prohibition against the fox watching  
19    the henhouse, I suppose.

20            Notwithstanding these obligations, the  
21    defendant did financially entangle himself with A2  
22    Environmental Services, which was the company he was  
23    monitoring. Specifically its owner transferred more  
24    than \$13,000 to the defendant, and his name appeared  
25    on other documents associated with A2.



1           The defendant conducted what's known as an  
2   asbestos survey of the site in question, and he  
3   documented there was more than 665,000 square feet of  
4   RACM and 6,000 linear feet of RACM throughout 11  
5   buildings on-site. The jurisdictional threshold, as I  
6   think I've explained in the past, your Honor, are 260  
7   and 160 feet respectively. So he himself documented  
8   this was well over the federal jurisdictional  
9   threshold.

10           In or around July 2015 both HRVE and A2  
11   executed what's known as contract number 1, with Tech  
12   City, to provide both air and project monitoring  
13   services, as well as the abatement work. HRVE's  
14   specific contract was only for the project monitoring  
15   and air monitoring and was roughly \$30,000.

16           Between November 2015 and March 2016  
17   abatement work did proceed at the site with the  
18   defendant and his company providing that air and  
19   project monitoring. And during that same time DOL,  
20   the New York State Department of Labor, conducted  
21   inspections and issued seven notices of violation in  
22   connection with both HRVE and A2 personnel violating  
23   both state and federal asbestos regulations.

24           The last of the NOVs in the contract  
25   number 1 occurred on or about March 1st, 2016, where

1 New York State DOL found RACM not properly  
2 containerized, the decontamination unit not properly  
3 sealed off to the outside air, and abatement workers  
4 there without licenses. Also they were not handling  
5 RACM waste. Most troubling here, the final air  
6 clearance prepared in conduction with the activities  
7 on or about that time period was prepared by HRVE and  
8 sent to New York State Department of Labor, and it's  
9 one of the very few that actually did occur; there  
10 were very few final air clearances, based on our  
11 investigation. But this was purported to have been  
12 conducted by an individual that I'll refer to as SP  
13 for the purposes of this plea. But during our  
14 investigation, and we would be prepared to prove  
15 beyond a reasonable doubt, that this is an individual  
16 that actually never worked at the site.

17 A2 was discharged from the site on or about  
18 March 2016. HRVE remained in Tech City's employ  
19 throughout the entirety of the project. A2 did  
20 renegotiate a second contract at this point, and work  
21 resumed.

22 Between May and August 2016 again A2 and  
23 HRVE were providing services on-site. New York State  
24 Department of Labor again issued a series of NOVs  
25 during this time period. And during the same time

1 period at least one HRVE employee reported that  
2 Mr. Landell personally authorized the breakdown of  
3 contaminant without properly conducting a final air  
4 clearance. And that's contained at paragraph 5X on  
5 page 134 of the plea agreement.

6 The site was shut down on or about  
7 August 1st, 2016, when again DOL discovered evidence  
8 of extensive violations to include dry removal and  
9 work occurring outside the contamination area.

10 When asked both by New York State inspectors  
11 and EPA personnel, no one from either A2 Environmental  
12 Services or the defendant's company, HRVE, was able to  
13 provide a complete copy of many of the records that  
14 are required to be maintained by New York State  
15 Department of Labor.

16 The United States also seized extensive  
17 email records showing Mr. Landell's email and Miss  
18 Laskin saying things throughout this process like  
19 quote/unquote, paperwork is very important, it's more  
20 than just writing things down, you need certain things  
21 in your log for the code rule, but you also don't want  
22 to put too much in them, closed quote.

23 So the United States would be prepared to  
24 prove all of those facts beyond a reasonable doubt,  
25 your Honor, and those are the allegations that are

1 substantially contained both in the plea agreement and  
2 in the information which we alluded to.

3 THE COURT: All right. Mr. Landell, did you  
4 hear and understand what Mr. Gleason said about what  
5 you did or didn't do in this case?

6 THE DEFENDANT: Yes, your Honor, I did.

7 THE COURT: Is that all right, correct?

8 THE DEFENDANT: Yes, it's all correct. I  
9 mean their time, time is all.

10 THE COURT: So you're pleading guilty. Is  
11 that right?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Mr. Trainor, is that your  
14 understanding as well?

15 MR. TRAINOR: It is, your Honor. And as  
16 Mr. Gleason pointed out, the plea agreement was a  
17 formally negotiated description, it goes on for many  
18 pages, and it has much more detailed information  
19 related to my client's conduct in particular.

20 THE COURT: All right. Okay. Now, Mr. --  
21 Mr. Landell, did Mr. Trainor advise you of your rights  
22 in this case?

23 THE DEFENDANT: Yes, your Honor, he did.

24 THE COURT: Is there anything you'd like to  
25 ask me about your rights this morning?

1 THE DEFENDANT: No, your Honor.

2 THE COURT: Are you satisfied with what  
3 Mr. Trainor has done for you so far?

4 THE DEFENDANT: Yes.

5 THE COURT: Has Mr. Trainor or Mr. Gleason  
6 or Mr.\_Donner or any public official or anyone made  
7 any promises to you that you'd be treated leniently in  
8 exchange for your plea of guilty?

9 THE DEFENDANT: No.

10 THE COURT: Has anybody threatened you with  
11 the use of force to induce you to plead guilty?

12 THE DEFENDANT: No.

13 THE COURT: Are you pleading guilty freely  
14 and voluntarily?

15 THE DEFENDANT: Yes.

16 THE COURT: Are you currently on probation  
17 from any other court or parole from any institution?

18 THE DEFENDANT: No.

19 THE COURT: All right. This is the part  
20 where I would ask the government to recite what it  
21 knew about your conduct in this case, but it's already  
22 done that, and you acknowledged that that was the  
23 case. So we won't do that again. It would be  
24 redundant and I don't believe necessary. But what I  
25 will do is ask Mr. Gleason to advise you and the Court

1 what the maximum penalty would be for the count  
2 involved.

3 MR. GLEASON: Absolutely, your Honor.  
4 Again, these are also set forth in the plea agreement  
5 on page 3 paragraph 3, but in summary form, the  
6 maximum penalties for a violation of 18 United States  
7 Code Section 371, which I can go over the elements,  
8 your Honor, but the penalties here are a maximum of 5  
9 years incarceration pursuant to 18 United States  
10 Code 371. 3 years supervised release pursuant to 18  
11 United States Code 3583 subsection B(2). 1 to 5 years  
12 probation alternatively pursuant to 18 United States  
13 Code 3561(C)(1). A fine of \$250,000 or twice the  
14 pecuniary loss or gain pursuant to 18 United States  
15 Code Section 3571. Special assessment of \$100  
16 pursuant to 18 United States Code 3013  
17 subsection A(2)A.

18 I also will add in this particular case  
19 restitution will be at play in the sentencing  
20 proceedings pursuant to United States Code 3553(A).  
21 As I think I've alluded to in prior plea hearings,  
22 your Honor, the cleanup costs will be a substantial  
23 portion of the restitution the Government is seeking,  
24 specifically those incurred by the EPA. The current  
25 estimated, and they are estimated, cleanup costs at

1 the site are roughly 1.3 million based on the most  
2 recent figures I've seen. And we can go into that in  
3 much more detail at sentencing. I won't do it here.

4 The other thing I will hasten to add is with  
5 respect to, although it's not a maximum or minimum  
6 penalty, the plea agreement does discuss collateral  
7 consequences beyond those that you would normally see  
8 in a standard plea agreement. As a special condition  
9 that the parties have agreed to, the defendant will be  
10 giving up some licensing privileges to work in the  
11 asbestos industry in New York. Likewise, your Honor,  
12 there may be implications beyond what we can predict,  
13 meaning you, me, the defendant, anybody, at this time,  
14 on things like permits, licensure, contracting, things  
15 like that.

16 Those are the -- those are the maximum  
17 penalties, your Honor.

18 THE COURT: All right, Mr. Landell. In  
19 addition to what Mr. Gleason has told you, the Court  
20 also must advise you that if it were to sentence you  
21 to a period of incarceration followed by a period of  
22 supervised release, if you violate any of the terms  
23 and conditions of that release you'd be subject to a  
24 further term of imprisonment. And although it's not  
25 mentioned, conviction of a felony also would prevent

1 you from possessing firearms or, in some  
2 jurisdictions, voting. That's not true in all  
3 jurisdictions.

4 Also, under and pursuant to certain  
5 sentencing guidelines adopted by the United States  
6 which used to be mandatory but are no longer mandatory  
7 but still must be considered by the Court in the  
8 sentencing process, my discretion in sentencing you is  
9 thereby affected and the Court must enforce the law as  
10 it stands today. But sometimes the Court can sentence  
11 you above the guidelines or below the guidelines or  
12 even outside the guidelines, depending upon the facts,  
13 the circumstances, and the law that's presented to the  
14 Court at or about the time of sentencing.

15 So you understand what I just said about the  
16 guidelines?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Have you done a preliminary  
19 guideline calculation, Mr. Gleason?

20 MR. GLEASON: We have, your Honor. And the  
21 parties have agreed to certain stipulated provisions  
22 of those guidelines.

23 THE COURT: Okay.

24 MR. GLEASON: Specifically those set forth  
25 in paragraph 6A on page 17 of the plea agreement.



1           Based on our estimate, the total offense  
2     level after acceptance would be 17. Assuming the  
3     defendant was a category I offender, your Honor, that  
4     would give an advisory guidelines terms of  
5     incarceration of 24 to 30 months.

6           This is how we got there. The base would be  
7     prescribed by Section 2(Q)1.2 of the guidelines, that  
8     would rate it a base of 8. The parties have agreed  
9     that the application of a 6-point enhancement under  
10    the repetitive release provision is appropriate under  
11    the 2(Q)1.2 subsection B(1)(A); that there were  
12    substantial clean-ups which would add another 4 points  
13    pursuant to 2(Q)1.2 subsection B(3); that the  
14    defendant used a special skill, which requires another  
15    2-point addition; and then the defendant through his  
16    acceptance would be entitled to 2 to 3 points off.

17           Again, as you've already stated, your Honor,  
18    these are obviously just estimates at this point until  
19    we see a presentence investigation report and other  
20    facts that come prior to sentencing.

21           THE COURT: All right. Mr. Landell, did you  
22    sign your plea agreement in this case?

23           THE DEFENDANT: I'm sorry?

24           THE COURT: Did you sign your plea  
25    agreement?

1 THE DEFENDANT: Yes, I did, your Honor.

2 THE COURT: Did you talk it over with your  
3 attorney before you signed it?

4 THE DEFENDANT: Yes, I did.

5 THE COURT: Did he explain it to you?

6 THE DEFENDANT: Yes.

7 THE COURT: Did you understand it when you  
8 signed it?

9 THE DEFENDANT: Yes, I did.

10 THE COURT: Now, in your plea agreement,  
11 according to the government, although I'm not quite  
12 sure I can find it, it's got to be in here someplace,  
13 you've agreed to give up certain appeal rights in this  
14 case. And some of them were articulated by  
15 Mr. Gleason, but can you now articulate for us what  
16 appeal rights Mr. Landell is waiving by signing this  
17 plea agreement?

18 MR. GLEASON: Yes. And I think the -- the  
19 provision you're looking for, your Honor, is on  
20 page 17 of the plea agreement, paragraph 7.

21 THE COURT: Okay.

22 MR. GLEASON: And as you mentioned, there is  
23 a -- there are both appellate and collateral attack  
24 waivers contained in that paragraph. And as I  
25 explained before, your Honor, the defendant is waiving

1 his right to direct appeal of any sentence, and  
2 conviction, as well as collateral attack rights, with  
3 the exception of ineffective assistance of counsel and  
4 malicious prosecution. He is also waiving his right  
5 to appeal a sentence with the exception of any  
6 sentence that is above the advisory guidelines range  
7 as calculated at the sentencing by this Court. Not  
8 what I just laid out but what would occur at the  
9 sentencing. So for instance, your Honor, if our  
10 estimate was correct, and the advisory term was 24 to  
11 30 months, if the defendant received a sentence of  
12 anything less than 30 months, there would be a waiver  
13 in that case. Beyond that there wouldn't be.

14 THE COURT: All right.

15 MR. GLEASON: And then I can also recite  
16 some of the other key terms of the plea agreement if  
17 you'd like. Otherwise I can sit down.

18 THE COURT: Okay. All right, Mr. Landell,  
19 did you understand what you were doing when you agreed  
20 to give up the appeal rights that Mr. Gleason just  
21 mentioned?

22 THE DEFENDANT: Yes, I did.

23 THE COURT: And did you do that voluntarily?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay. Was the plea agreement

1 signed by Mr. Donner and Mr. Gleason on behalf of the  
2 government?

3 MR. GLEASON: It was, your Honor.

4 THE COURT: And, Mr. Trainor, did you sign  
5 on behalf of Mr. Landell?

6 MR. TRAINOR: Well, your Honor, Mr. Landell  
7 signed the document, I also signed it.

8 THE COURT: All right. Now, Mr. Landell,  
9 the Court also has to advise you that it's not bound  
10 by any sentencing recommendation contained in the plea  
11 agreement, and you'll have no right to withdraw your  
12 plea of guilty if the Court decides not to accept any  
13 nonbinding recommendation. The Court will, of course,  
14 defer, or put off, its decision to accept or reject  
15 any recommendation in the agreement until I have seen  
16 the presentence investigation report and any other  
17 materials that are forwarded to me that bear on  
18 sentencing.

19 So you understand what I just said about the  
20 Court's ability to reject any nonbinding  
21 recommendation in the plea agreement?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. Now that you've  
24 heard about the potential statutory sentence in the  
25 guidelines, do you still wish to plead guilty?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And are you pleading guilty  
3 because you are guilty?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Mr. Trainor, would you state  
6 your background and experience in handling cases of  
7 this kind?

8 MR. TRAINOR: Well, your Honor, I was  
9 admitted to the practice of law in 2001, practicing  
10 criminal law mostly in state courts. In 2015 I joined  
11 the federal public defenders office and have been  
12 practicing exclusively in Federal Court since that  
13 time. I've had a number of cases that involve a  
14 variety of crimes. I'll be candid, this is the first  
15 time I've handled an asbestos case. However, I was  
16 able to go through the guidelines and discuss  
17 everything with my client.

18 THE COURT: All right. Approximately how  
19 much time have you spent so far defending Mr. Landell  
20 in this case?

21 MR. TRAINOR: Because of the learning curve  
22 the total, I actually looked it up, the total amount  
23 of time I've spent on this case is over 81 hours.

24 THE COURT: Have you had what you believe to  
25 be adequate discovery of the government's case?

1 MR. TRAINOR: Yes, your Honor.

2 THE COURT: Have you advised Mr. Landell of  
3 his rights, the nature of the charge, and the  
4 consequences of pleading guilty?

5 MR. TRAINOR: I have.

6 THE COURT: Except what's contained in the  
7 plea agreement, have you made any promises or threats  
8 to induce him to plead guilty?

9 MR. TRAINOR: No, your Honor.

10 THE COURT: Are you satisfied that he is  
11 pleading guilty freely and voluntarily with an  
12 understanding of the charge and the consequences?

13 MR. TRAINOR: Yes, your Honor.

14 THE COURT: Do you know of any defenses that  
15 he has that would prevail if the case went to trial?

16 MR. TRAINOR: No, your Honor.

17 THE COURT: Do you know of any reason he  
18 should not plead guilty?

19 MR. TRAINOR: No, your Honor.

20 THE COURT: All right. Based on the  
21 foregoing, the Court will find that Mr. Landell pled  
22 guilty freely and voluntarily; that he is and was  
23 competent to enter such a plea; that he understands  
24 the charges against him and the consequences of  
25 pleading guilty; that there is and was a basis in fact

1 for the Court accepting and entering a plea.

2 The Court will direct the probation  
3 department to prepare and submit a presentence report.  
4 The Court will set sentencing for Wednesday,  
5 October 6th, 2021, at 10 a.m. in Binghamton, New York.

6 Is there anything further from the  
7 government?

8 MR. GLEASON: No, your Honor.

9 THE COURT: And defense counsel?

10 MR. TRAINOR: Nothing further, your Honor.

11 THE COURT: I see there's a recommendation  
12 from pretrial services that based upon the information  
13 it provided to the Court that the Court was advised  
14 that Mr. Landell should be allowed to continue to  
15 remain released on a personal recognizance bond  
16 without any pretrial supervision. Right?

17 MR. TRAINOR: That is my understanding, your  
18 Honor.

19 THE COURT: So ordered.

20 Court stands adjourned in this matter.

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CERTIFICATE OF OFFICIAL REPORTER

I, RUTH I. LYNCH, RPR, RMR, NYS Realtime  
Certified Reporter, Federal Official Court Reporter,  
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Dated this 4th day of October, 2021.

By Ruth I. Lynch, RMR  
RUTH I. LYNCH, RPR, RMR, NYSCRR  
Official U.S. Court Reporter